

REMARKS

Applicant requests reconsideration of the application in view of the present Amendment.

Concerning the objection to the specification, Applicant respectfully submits that the original specification, in view of the drawings, meets the written description and enablement requirements of 35 USC §112 for the "vertically downward" and "vented" limitations of claims 1 and 15. Nevertheless, in an effort to advance the application to allowance, the specification is amended to provide literal correspondence of those terms in the specification and claims. Withdrawal of the objection, and allowance of claims 1 and 4, is respectfully requested.

Claims 22 and 24 are rewritten in independent form as new claims 27 and 28. Allowance of claims 27 and 28 is respectfully requested.

Applicant further requests reconsideration of the rejections of claims 15 and 17-19 under 35 USC §103. The apparatus of Thorpe is designed to discharge a spray or shower through the bottom wall of the container, or to discharge a heavy or high-volume flow through the end wall of the container. See column 4, lines 37-47. As stated at column 4, line 63, the foregoing apparatus "fully accomplishes its intended objects" which, as set forth in column 1, include a structure that is not "relatively complex in construction and expensive to manufacture." Therefore, a person of ordinary skill in the art reading the Thorpe patent would have no reason to consider the container walls to be inadequate for a gravitational discharge of the fluid contents, and would find no suggestion or motivation to substitute a different diffuser. Furthermore, since Thorpe teaches that the apparatus should not be relatively complex or expensive, a substitution of the Hubbard diffuser, which requires both a pump and an engine to drive the pump, would be contrary to the teachings of Thorpe and could not have been obvious under 35 USC §103.

Even if the apparatus of Thorpe were provided with a diffuser "as suggested by Hubbard," it would not have a diffuser that is configured to diffuse the liquid "by the force of only gravity" as recited in claim 15. Instead, it would then have a diffuser that depends on "a pump and means for driving it such as a small gasoline engine" as actually disclosed by Hubbard at column 2, lines 34-35. Applicant respectfully submits that only the impermissible use of hindsight can isolate the diffuser of Hubbard as a part to be extracted from the pump, the motor and the other parts with which it cooperates, and further to transplant only the isolated diffuser of Hubbard to the apparatus of Thorpe in order to reconstruct the invention by using the Applicant's own specification as a guide to select and rearrange parts from the prior art. A proper analysis under 35 USC §103 addresses the combined teachings that the prior art references would present to a person of ordinary skill in the art who is reading those references without knowledge of the claimed invention. A proper analysis thus calls for the references themselves to provide a suggestion or motivation that would compel the person of ordinary skill to make the modification proposed in a rejection under 35 USC §103. These two references provide no suggestion or motivation for a person of ordinary skill in the art to select only the diffuser of Hubbard, to the exclusion of the pump and the motor, as proposed in the Office Action.

In view of the foregoing remarks, Applicant respectfully submits that claim 15 would not have been made obvious by the prior art under 35 USC §103, and is allowable. Each of claims 17-19 recites limitations that distinguish the invention further from the prior art under 35 USC §103, and is separately allowable. Accordingly, Applicant requests allowance of claims 15 and 17-19 along with claims 1,4, and 26-28.

Since withdrawn claims 7 and 20-21 depend from allowable claims, Applicant requests
reinstatement and allowance of those claims also.

Respectfully submitted,



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